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09/409,041	09/29/1999	JOHN M. PACKES JR.	WD2-99-030	4801
22927	7590	05/19/2006	EXAMINER	
WALKER DIGITAL 2 HIGH RIDGE PARK STAMFORD, CT 06905			CUFF, MICHAEL A	
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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/409,041
Filing Date: September 29, 1999
Appellant(s): PACKES ET AL.

Magdalena M. Fincham
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/8/05 appealing from the Office action
mailed 11/4/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 12-17, 29, 31-35, 38-42, and 53-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuhl et al. (US patent 5,873,069) in view of Bloomberg et al. (US patent 5,642,279).

(10) Response to Argument

There are two major issues as to the current rejection. The issues are motivation to combine and all specific features of the claimed invention being shown.

The examiner will rely on the claim map of the following page to address the specific features of the claimed invention.

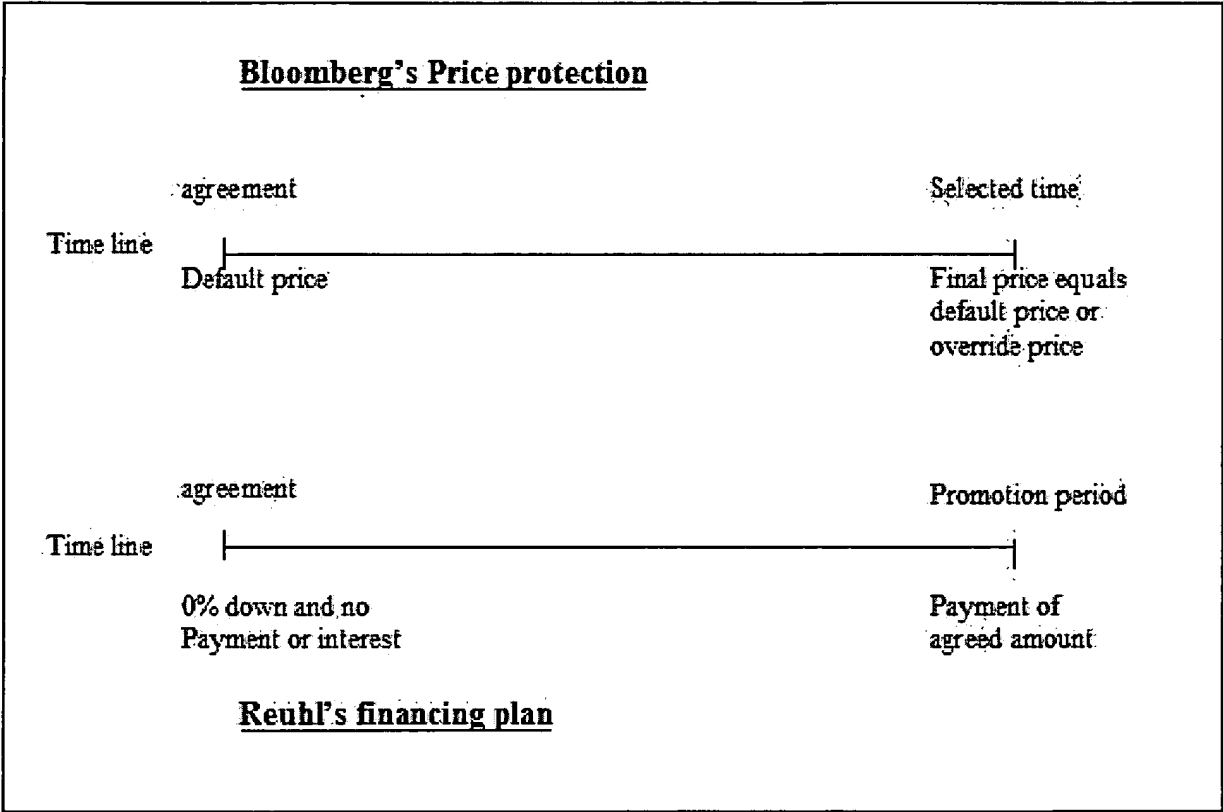
In addition to the claim map, there are trivial items, which should be addressed.

In reference to claim 53, because both Bloomberg and Reuhl have computer controllers, the mapped method shown on the next page also shows the method from the processor's perspective.

In reference to group II, Bloomberg does show (column 1, lines 31-32) an old and well-known older form of price protection where the system receives an "override" from a customer in the form of an advertisement.

In reference to group III, Bloomberg maintains it's own database by scanning advertisement of competitors (contacting them). This is an independent and therefore a confirming or verifying process.

In reference to group IV, page 2, line 11, of applicant's specification admits, "some credit card issuers also provide price protection programs".



As for motivation to combine, it is the examiner's position that the nature of the problem to be solved by the finance incentive of Reuhl and the price incentive of Bloomberg is to increase sales. Combining different types of incentives would be well within the reasonable limits of one of ordinary skill in the art of sales. For example, combining local store coupons with manufacturer coupons, combining selling a car for \$100 over cost with a \$500 rebate, or combining a sale self of slow moving item with a percentage off for frequent purchasers are all well known. Applicant even recognizes that combining transaction terms is old and well known, (see applicant's specification, page 1, lines 25-30, admitted prior art)

"When purchasing a product, consumers are generally concerned with obtaining a favorable transaction term, typically a low price. This concern may lead the consumer to postponing a purchase until he or she has had an opportunity to comparison shop for the most favorable transaction term. This search may be further complicated by a number of different transaction terms, such as: an interest or finance rate; a payment schedule (e.g., no down payment required or no monthly payments for 30 six months); and the duration or scope of warranty provisions."

The examiner's rationale is not merely conclusory. It has been shown that the financial incentive is old and well-known, the price incentive is old and well-known, the motivation to increase sales is old and well-known, and the motivation to offer combinations of transaction terms (pricing and finance) is old and well-known.

The examiner is relying on the test for implicit showing of motivation at set forth in *In re Kahn*, Slip Op. 04-1616, page 9 (Fed. Cir. Mar. 22, 2006).

"A suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. . . . The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). However, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *See Lee*, 277 F.3d at 1343-46; *Rouffett*, 149 F.3d at 1355-59. This requirement is as much rooted in the Administrative Procedure Act, which ensures due process and non-arbitrary decisionmaking, as it is in § 103. *See id.* at 1344-45." *In re Kahn*, Slip Op. 04-1616, page 9 (Fed. Cir. Mar. 22, 2006).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Cuff

Michael Cuff 5/12/06

Conferees:

Alexander Kalinowski

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TH
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Claim 1

A method comprising:

Establishing an agreement with a customer, the agreement defining a period of time and a default price for a product,

Wherein the customer is to provide payment of a final price of the product at the end of the period of time,

the final price being either the default price or an override price that is received before the end of the period of time;

conveying, at the beginning of the period of time, the product to the customer;

determining, by a processor, the final price for the product,

wherein the final price is determined to be either the default price or an override price that is received before the end of the period of time; and

completing, at the end of the period of time, a sale of the product using the final price as a term of the sale by charging the final price to the customer.

Claim Map for 09/409,041

Both Bloomberg and Reuhl show an initial price and period of time (see chart)

Reuhl shows that, at the end of the promotional period, payment is due.

Bloomberg shows, during the time interval, rebates may be due to a customer against the original price. The price less the rebate would be the override price.

Both Bloomberg and Reuhl show the customer receiving the product at the time of the agreement.

Bloomberg's computer system determines the amount of rebates until the time interval is complete. After a selected time, the process stops, thus determining a final price.

Bloomberg teaches that, at the end of the selected time, the final price will be the original price less the rebate amounts. If there are no rebates, the original or default price would be the final price.

Reuhl teaches, at the end of the promotional period, payment is due. In combining the two teachings, the rebates of Bloomberg would be applied to the balance of a Reuhl agreement during the 0% down and no payment or interest period. The end of the promotional period or selected time constitutes "completing a sale."